

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MEKHENA T.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-1339-SKV

ORDER REVERSING THE
COMMISSIONER'S DECISION

Plaintiff seeks review of the denial of his application for Supplemental Security Income. Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff was born in 1991, has a GED, and has worked as a toy salesperson. AR 43, 241. Plaintiff was last gainfully employed in 2017. AR 241.

In May 2019, Plaintiff applied for benefits, with an amended alleged onset date of May 30, 2019. AR 40, 212-21. Plaintiff's application was denied initially and on reconsideration, and Plaintiff requested a hearing. AR 109-12, 114-17. After the ALJ conducted a hearing in July 2021 (AR 36-66), the ALJ issued a decision finding Plaintiff not disabled. AR 15-30.

1 **THE ALJ'S DECISION**

2 Utilizing the five-step disability evaluation process,¹ the ALJ found:

3 **Step one:** Plaintiff has not engaged in substantial gainful activity since the application
4 date.

5 **Step two:** Plaintiff has the following severe impairments: major depressive disorder,
6 generalized anxiety disorder, obsessive-compulsive disorder, and borderline personality
7 disorder.

8 **Step three:** These impairments do not meet or equal the requirements of a listed
9 impairment.²

10 **Residual Functional Capacity (RFC):** Plaintiff can perform a full range of work at all
11 exertional levels with the following non-exertional limitations: he can understand,
12 remember, and carry out simple instructions and exercise simple workplace judgment.
13 He can perform work that is learned by on-the-job training, beyond a short demonstration
14 and lasting up to and including one month. He can respond appropriately to supervision,
15 but he should not be required to work in close coordination with co-workers, as in where
16 teamwork is required. He can work in jobs that require no interaction with the general
17 public to perform the work tasks, but this does not preclude a working environment
18 where the public is present. He can deal with occasional changes in the work
19 environment.

20 **Step four:** Plaintiff has no past relevant work.

21 **Step five:** As there are jobs that exist in significant numbers in the national economy that
22 Plaintiff can perform, Plaintiff is not disabled.

23 AR 15-30.

The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the
Commissioner's final decision. AR 1-6. Plaintiff appealed the final decision of the
Commissioner to this Court. Dkt. 4.

LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
security benefits when the ALJ's findings are based on harmful legal error or not supported by

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P, App. 1.

1 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir.
2 2005). As a general principle, an ALJ's error may be deemed harmless where it is
3 "inconsequential to the ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104,
4 1115 (9th Cir. 2012) (cited sources omitted). The Court looks to "the record as a whole to
5 determine whether the error alters the outcome of the case." *Id.*

6 Substantial evidence is "more than a mere scintilla. It means - and means only - such
7 relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
8 *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d
9 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving
10 conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v.*
11 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record
12 as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the
13 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is
14 susceptible to more than one rational interpretation, it is the Commissioner's conclusion that
15 must be upheld. *Id.*

16 DISCUSSION

17 Plaintiff argues the ALJ erred in discounting his testimony and in considering the report
18 completed by his father, and in finding the opinion of his therapist unpersuasive. The
19 Commissioner argues the ALJ's decision is free of harmful legal error, supported by substantial
20 evidence, and should be affirmed.

21 A. The ALJ Erred in Discounting Plaintiff's Testimony

22 The ALJ summarized Plaintiff's allegations and explained that he discounted them
23 because: (1) the medical evidence is inconsistent with Plaintiff's allegations because many of the

1 objective findings are normal and Plaintiff's symptoms improved with medication; and (2) his
 2 activities (interacting normally with providers and at his administrative hearing, attending
 3 college³, and forming friendships and dating relationships) are inconsistent with his alleged
 4 cognitive and social limitations. AR 21-25. Absent evidence of malingering, an ALJ must
 5 provide clear and convincing reasons to discount a claimant's testimony. *See Burrell v. Colvin*,
 6 775 F.3d 1133, 1136-37 (9th Cir. 2014).

7 Plaintiff argues that the ALJ's reasons for discounting his testimony are not legally
 8 sufficient. First, Plaintiff argues that the ALJ failed to identify any medical evidence that
 9 contradicts his allegations. The ALJ acknowledged that Plaintiff received inpatient psychiatric
 10 treatment before and during the adjudicated period, but emphasized that during and after that
 11 treatment, Plaintiff's hallucinations decreased and he did not attempt to act on his persistent
 12 violent thoughts. AR 22-23. The record corroborates the ALJ's factual summary to this extent,
 13 but the record also indicates that while Plaintiff did not attempt to act on his intrusive thoughts,
 14 those thoughts persisted to a degree that significantly interfered with his ability to function.⁴

15
 16 ³ The Commissioner concedes that the ALJ's finding with regard to college is inaccurate with respect to
 17 the adjudicated period, because Plaintiff attended college before, not during, the adjudicated period. *See*
 Dkt. 22 at 16 n.7.

18 ⁴ *See, e.g.*, AR 747 ("Obsessive thoughts have been worse and [Plaintiff] cannot act on his compulsions
 19 due to the violent nature of the obsessions which leave[s] him no choice but to isolate."), 751 ("Obsessive
 20 thoughts have been worse and difficult [to] control in the past 3 weeks. . . . He is isolating still due to the
 21 nature of his problems."), 756 (reports still isolating due to intrusive violent thoughts), 1252 (Plaintiff
 22 continues to self-harm and reports "intrusive violent and sexual thoughts"), 1254 (Plaintiff reports that
 23 intrusive thoughts continue and he has trouble "getting past them" throughout the day), 1286 (Plaintiff
 reports an increase in intrusive thoughts and a shift in the target of those thoughts), 1301 (Plaintiff reports
 sleeping 20-22 hours per day), 1305 (Plaintiff reports "still sleeping throughout the day to get away from
 his own thoughts"), 1362 (Plaintiff reports "spend[ing] much of his time alone in his room, having some
 brief and intermittent interactions with his parents"), 1377 (Plaintiff reports experiencing racing and
 obsessive thoughts that led him to engage in self-harm earlier in the week, and Plaintiff experienced
 racing thoughts during a therapy appointment), 1382 (Plaintiff reports self-harm behavior and an episode
 of dissociation earlier in the week; Plaintiff also reports that he experienced intrusive violent thoughts
 about a psychiatrist during an appointment but did not disclose them to her), 1391 (Plaintiff reports to

Many of the normal mental status examination findings cited by the ALJ are contained within treatment notes that nonetheless describe significant functional limitations resulting from intrusive, obsessive thoughts, and the ALJ's focus on normal mental status findings does not pertain to the symptoms that Plaintiff alleges are disabling.⁵ Because the objective findings cited by the ALJ do not directly connect to the symptoms that Plaintiff alleged, the ALJ erred in relying only on those parts of the notes that support his conclusion and ignoring the parts of the notes that are inconsistent with his RFC assessment. *See Reddick v. Chater*, 157 F.3d 715, 722-23 (9th Cir. 1998) ("In essence, the ALJ developed his evidentiary basis by not fully accounting for the context of materials or all parts of the testimony and reports. His paraphrasing of record material is not entirely accurate regarding the content or tone of the record. We conclude that his approach and conclusions do not fully account for the nature of CFS and its symptoms.").

Furthermore, although the ALJ emphasized that Plaintiff was able to avoid acting on his intrusive thoughts of violence and rape (AR 24-25), Plaintiff was able to do so by isolating, self-harming, and engaging in obsessive rituals, as detailed *supra*. The ALJ did not explain how

therapist that in order to avoid triggers for his intrusive thoughts, he socially isolates), 1395 (Plaintiff experienced intrusive thoughts during a therapy session and could no longer make eye contact with therapist), 1401 (Plaintiff engaged in self-harm behavior and has been losing track of time due to intrusive thoughts), 1402 (Plaintiff reports "persistent heightened anxiety and depression"), 1406 (Plaintiff reports engaging in self-harm in order to stop the obsessive thoughts), 1407 (increased obsessive thoughts that Plaintiff describes as "homicidal and rape fantasies"), 1410 (Plaintiff engaged in self-harm that week).

⁵ See AR 24 (citing, *e.g.*, AR 481-82 (normal attention, but increased auditory hallucinations and intrusive thoughts that led Plaintiff to isolate in his bed), 484-85 (normal attention, but auditory hallucinations and suicidal ideation), 650-52 (normal attention, but isolating and self-harming), 763-66 (normal objective findings, but self-harming and isolating to deal with intrusive thoughts), 1390-91 (normal objective findings, but Plaintiff's intrusive thoughts have led him to isolate to avoid triggers), 1392-93 (normal objective findings, but Plaintiff experienced a panic attack due to being without his family in public), 1396-97 (normal objective findings, but Plaintiff reported an episode of intrusive thoughts triggered by emotional vulnerability), 1406-07 (normal objective findings, but Plaintiff reports engaging in self-harm to calm down his intrusive violent thoughts).

1 these coping mechanisms could be compatible with working full-time, even with the cognitive,
2 social, and adaptation limitations accounted for by the ALJ. *See* AR 20-21 (RFC assessment).

3 The ALJ also failed to cite activities that either contradict Plaintiff's allegations or
4 demonstrate the existence of transferable work skills. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th
5 Cir. 2007) (activities may undermine credibility where they (1) contradict the claimant's
6 testimony or (2) "meet the threshold for transferable work skills"). The ALJ cited Plaintiff's
7 ability to engage with his providers one-on-one in a clinical environment as a reason to discount
8 his allegation of disabling social limitations (AR 25), but there is no inconsistency evident here
9 because workplace interactions are unlike therapeutic interactions with a patient. *See, e.g.,*
10 *Schultz v. Colvin*, 2015 WL 2062383, at *10 (W.D. Wash. May 4, 2015) (rejecting an ALJ's
11 discounting of social limitations based on plaintiff's ability to interact with medical providers,
12 emphasizing "the significant difference in time, demands, and expectations between attending a
13 medical appointment and full-time employment"); *Smith v. Colvin*, 2014 WL 2154522, at *4
14 (W.D. Wash. May 22, 2014) (finding that a claimant's interaction with medical providers "does
15 not necessarily present the same type of difficulties as do social interactions with supervisors on
16 the job").

17 Likewise, Plaintiff's ability to remain "coherent and quite articulate" during the
18 telephonic administrative hearing does not either contradict his allegations or demonstrate an
19 ability to work, given that a telephonic administrative hearing bears little resemblance to most
20 workplaces, particularly those that the ALJ found suitable for Plaintiff. *See* AR 29 (finding
21 Plaintiff capable of working as a general laborer and industrial cleaner). His ability to form one
22 short-term friendship/relationship while he was hospitalized for inpatient psychiatric care during
23 the adjudicated period may indicate, as the ALJ found (AR 25), some degree of social

1 functioning, but again, this type of interaction is not sufficiently similar to workplace interaction
2 to demonstrate that he can work around co-workers and the public on a full-time basis and can
3 respond appropriately to supervision. *See* AR 20-21 (finding that Plaintiff can “respond
4 appropriately to supervision, but he should not be required to work in close coordination with
5 coworkers, as in where teamwork is required. He can work in jobs that require no interaction
6 with the general public to perform the work tasks, but this does not preclude a working
7 environment where the public is present.”).

8 Because the record does not support the ALJ’s finding of inconsistency between the
9 treatment notes and Plaintiff’s allegations, and the ALJ did not identify activities that either
10 contradict Plaintiff’s allegations or demonstrate the existence of transferable work skills, the
11 ALJ’s reasons for discounting Plaintiff’s testimony are not legally sufficient. The ALJ shall
12 reconsider Plaintiff’s allegations on remand.

13 **B. The ALJ Should Consider Plaintiff’s Father’s Report on Remand**

14 Plaintiff’s father completed a third-party function report (AR 279-86), which the ALJ
15 summarized and found that it was insufficient to establish disability for the same reasons that the
16 ALJ provided with regard to Plaintiff’s allegations. AR 28. Because, as explained *supra*, the
17 ALJ erred in assessing Plaintiff’s allegations and must reconsider them on remand, the ALJ
18 should also reconsider Plaintiff’s father’s similar report.⁶

21
22 ⁶ The applicable regulations do not require the ALJ to weigh the Plaintiff’s father’s report, or to address
23 the consistency or supportability of that report, but they do require that the ALJ must consider this
evidence. *See* 20 C.F.R. §§ 416.920, 416.920c. Although Plaintiff contends that the Ninth Circuit has
continued to require an ALJ to provide germane reasons to discount lay evidence even under the new
regulations (Dkt. 24 at 9), the case Plaintiff cites does not apply the new regulations that apply to this
case. *See Muntz v. Kijakazi*, 2022 WL 17484332, at *2 n.1 (9th Cir. Dec. 7, 2022).

1 **C. The ALJ Erred in Assessing Medical Opinion Evidence**

2 Plaintiff's treating therapist, Daniella Fernandez, LMHCA, LMFT, SUDP, MHP, wrote a
3 one-page letter describing Plaintiff's diagnoses, symptoms, and limitations. AR 775. Ms.

4 Fernandez concluded that Plaintiff

5 would face challenges in almost any type of employment situation that required
6 regular attendance, completion of specific tasks in a specified timeframe, and
7 engagement with coworkers. [Plaintiff's] mental health challenges interrupt his
sleep patterns, limit his ability to feel safe in certain social situations, and limit his
ability to follow strict daily structure.

8 *Id.*

9 Under regulations applicable to this case, the ALJ is required to articulate the
10 persuasiveness of each medical opinion, specifically with respect to whether the opinions are
11 supported and consistent with the record. 20 C.F.R. § 416.920c(a)-(c). An ALJ's consistency
12 and supportability findings must be supported by substantial evidence. *See Woods v. Kijakazi*,
13 32 F.4th 785, 792 (9th Cir. 2022).

14 In this case, the ALJ found Ms. Fernandez's opinion unpersuasive to the extent she
15 suggested that Plaintiff has marked limitations as to absenteeism, maintaining a work schedule,
16 and dealing with coworkers because these limitations were unsupported by Ms. Fernandez's
17 treatment notes, which demonstrate that Plaintiff was engaged with treatment and generally had
18 normal mental status findings, and inconsistent with other evidence in the record, showing that
19 Plaintiff's symptoms improved with treatment and that he had many normal mental status
20 findings. AR 27.⁷

21 Neither the supportability nor the consistency finding is supported by substantial
22 evidence, for reasons explained *supra*. The mental status findings of Ms. Fernandez or other

23 _____
⁷ The ALJ also found that other parts of Ms. Fernandez's opinion failed to identify specific functional limitations, which is a reasonable reading of the opinion. *See* AR 775.

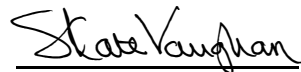
1 providers do not pertain to the primary symptoms that Plaintiff alleged, namely the intrusive
2 thoughts that led him to isolate and harm himself. Plaintiff indeed engaged in treatment, and
3 experienced some degree of improvement at times, but the therapeutic relationship he formed
4 during appointments with Ms. Fernandez is unlike a workplace context, despite the ALJ's
5 reasoning to the contrary. *See* AR 27 ("While the claimant may have shown little progress in
6 outside assignments, as [Ms. Fernandez] indicated, he was able to take direction and follow
7 through in session and use simple judgment in that supervised context, suggesting that he could
8 perform similarly in a work environment.").

9 On remand, the ALJ shall reconsider Ms. Fernandez's opinion in light of the treatment
10 notes as a whole, without isolating the mental status findings to the exclusion of other relevant
11 parts of the record.

12 CONCLUSION

13 For the reasons set forth above, the Commissioner's final decision is **REVERSED** and
14 this case is **REMANDED** for further administrative proceedings under sentence four of 42
15 U.S.C. § 405(g). On remand, the ALJ should reconsider Plaintiff's allegations, Plaintiff's father's
16 report, and Ms. Fernandez's opinion, and reconsider any other part of the decision as necessary
17 in light of the updated record.

18 Dated this 4th day of May, 2023.

19 

20 S. KATE VAUGHAN
21 United States Magistrate Judge
22
23